

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JAMES PETTUS,

Plaintiff,

v.

9:08-CV-0883
(TJM)

ROSOTTI, Correctional Officer, Great Meadow
Correctional Facility, *et al.*,

Defendants.

APPEARANCES:

JAMES PETTUS
03-R-3597
Great Meadow Correctional Facility
Box 51
Comstock, NY 12821
Plaintiff, *pro se*

THOMAS J. MCAVOY
Senior United States District Judge

DECISION and ORDER

Plaintiff James Pettus commenced this action by filing a *pro se* civil rights complaint. Dkt. No. 1. In his complaint, plaintiff alleged that the defendant Rosotti had used excessive force on him. Plaintiff alleged that the event occurred on September 25, 2008. *Id.* However, this action was filed on August 18, 2008, over one month prior to the alleged event occurring. Accordingly, by Order of this Court filed on December 10, 2008 (“December Order”), plaintiff was directed to submit an affidavit, sworn to under penalty of perjury, stating the date of the incident with defendant Rosotti that serves as the basis for this action.¹

¹ The Court is well aware of plaintiff’s litigation history, and the fact that he presently has amassed far more than “three strikes.” Cf. 9:06-CV-0152, Dkt. No. 24.

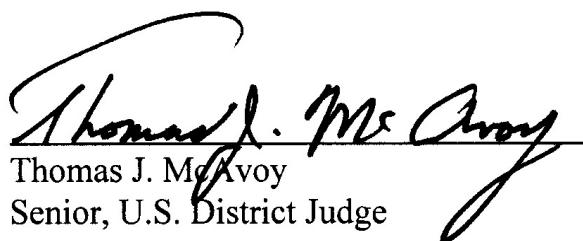
To date, plaintiff has not submitted the required affidavit and the time to do so has expired. If plaintiff fails to submit the required affidavit **on or before January 31, 2009**, this action will be dismissed, without prejudice, without further Order of this Court.

WHEREFORE, it is hereby

ORDERED, that plaintiff shall file with the Court, **on or before January 31, 2009**, an affidavit, sworn to under penalty of perjury, that states the date of the incident with defendant Rosotti that serves as the basis for this action, and it is further
ORDERED, that the Court reserves any ruling as to the sufficiency of the complaint, and plaintiff's application to proceed *in forma pauperis*, until plaintiff complies with this Order, and it is further

ORDERED, that the Clerk serve a copy of this Decision and Order on plaintiff.

Dated:January 15, 2009



Thomas J. McAvoy
Senior, U.S. District Judge